IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P.379 of 2000

Date of decision:**Oct.24, 2007**

Shri M.K.Gautam Petitioner.

Versus

Union of India and others. Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice *V.K. Ahuja, J.*

Whether approved for reporting[1]*?*

For the petitioners: Mr.Surinder Sharma, Advocate.

For the respondents: Mr.Sandeep Sharma, Asstt. Solicitor General of India.

Per V.K.Ahuja.J.(Oral):

This Judgment will dispose of the Writ Petition filed by the petitioner under Articles 226/227 of the Constitution of India challenging the order dated 11.4.2000 passed by the Central Administrative Tribunal, Chandigarh Circuit Bench at Shimla.

The brief facts of the case are that an OA was filed by the petitioner before the learned Central Administrative Tribunal, hereafter to be referred as CAT, which was dismissed in limine by the learned CAT. Being aggrieved, the petitioner has filed the present writ petition for quashing of the said order and for grant of pay and allowances from an earlier date. Notice of the petition was issued to the respondents who filed reply.

Whether the reporters of Local Papers may be allowed to see the Judgment?

We have heard the learned counsel for the parties and have gone through the record of the case.

A perusal of the impugned order passed by the learned CAT shows that the petitioner had prayed that the order of the respondents vide which they have denied two stagnation increments to him be quashed being arbitrary and illegal. The petitioner had also challenged the vires of the notification issued by the Central Government vide which these pay-scales were to come into force on the date of their publication in the official gazette. The petitioner had also prayed for re-fixation of his pay w.e.f.1.1.1996. The petitioner was initially appointed as Field Publicity Assistant and was also given Selection Grade and his pay was accordingly fixed and he has already retired from service. However, he had claimed that he was entitled to the new grades w.e.f.1.11996 on the recommendations of the 5th Pay Commission whereas he was granted the scales w.e.f.29.5.1998 the date when the notification was issued implementing the pay scales.

We have gone through the order passed by the learned CAT which cannot be said to be an order in limine since all the facts have been discussed by the ld. CAT that the petitioner had retired from service on 30.11.1997 six months before the date of notification. The petitioner had not worked on the post of new scale of pay, therefore, he cannot claim the benefit of new scales which had only prospective effect from the date of its notification i.e.29.5.1998. The scales of pay are to be released as per the recommendation of the Pay Commission from the date when the Government notifies the date of its implementation. Once the

notification had been issued on 29.5.1998 allowing the new scales having the prospective effect and there was no retrospective effect, therefore, the petitioner, who had already retired prior to the issuance of the notification cannot claim any benefit in the new scales from an earlier date than the one from which the notification was issued. It is the prerogative of the State Government to consider as to from which date these scales shall be released and an employee has no right to claim that he is entitled to these scales from an earlier date and accordingly the prayer that these rules are ultra vires of the constitution, cannot be considered.

The petitioner, during the course of arguments had also referred to a copy of the judgment passed by the ld. CAT In OA No.469-CH of 2002 ***J.S.Bhullar*** vs. ***Union of India and another*** wherein a similarly placed person working as Field Publicity Assistant was granted these scales from an earlier period since he had already been promoted prior to that date. Those findings were given in that case in view of the facts of that case and such findings cannot be said to be binding either on the CAT or this Court in any manner, whatsoever.

A perusal of the record shows that the petitioner who was promoted earlier to the post of Technical Assistant, was working in that capacity and was reverted back at his own request and there is nothing on record to show that he had been promoted to the post of Technical Assistant (Sound) as in the case of Shri J.S.Bhogal, the copy of judgment of whose case was shown during the course of arguments. The ld. CAT had considered the case of the petitioner in its right perspective and those findings do not suffer from any

illegality to be interfered with and as such there is not merit in the writ petition which is dismissed accordingly with no order as to costs.

(V.K.Ahuja),J. (Deepak Gupta),J.

24th October, 2007
(SDS)